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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:16-cr-00046-GMN-PAL

8 Plaintiff,

9 v.

ORDER

10 RYAN W. PAYNE,

(Mot. File Untimely Mot. – ECF No. 2504)

11 Defendant.

12 This matter is before the court on Defendant Ryan W. Payne’s Motion for Leave to File
13 Untimely Pretrial Motion (ECF No. 2504), filed September 21, 2017. This Motion is referred to
14 the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

15 The current Motion acknowledges that the deadline to file pretrial motions in this case was
16 October 3, 2016. *See* Case Management Order (ECF No. 321). Payne filed numerous pretrial
17 motions on that day and has filed many more since. Payne’s trial is scheduled to commence
18 October 10, 2017. The current Motion states that counsel neglected to file an additional motion to
19 dismiss before the deadline and counsel believes they would be ineffective if they did not file the
20 additional motion. Counsel does not, however, provide a reason for the delay.

21 Rule 12 of the Federal Rules of Criminal Procedure addresses deadlines for filing pretrial
22 motions and the potential consequences for filing an untimely motion. If a party does not meet the
23 deadline for filing a pretrial motion, “the motion is untimely. But a court may consider the defense,
24 objection, or request if the party shows good cause.” Fed. R. Crim. P. 12(c)(3). The decision
25 whether there is good cause to consider an untimely Rule 12 motion lies in the discretion of the
26 district court. *See United States v. Tekle*, 329 F.3d 1108, 1113 (9th Cir. 2003).


27 The court finds that Payne has not shown good cause to consider the additional motion to
28 dismiss almost one year after the expiration of the pretrial motions deadline. The attached motion

1 to dismiss challenges the sufficiency of Count Sixteen of the Superseding Indictment (ECF No. 27)
2 on various grounds. The court has considered and decided multiple motions challenging the
3 sufficiency of the Superseding Indictment, including motions filed by counsel for Payne, and there
4 has been no intervening change in law. Most importantly, the current Motion provides no
5 explanation at all why counsel “neglected” to timely file the current proposed motion to dismiss.

6 Accordingly,

7 **IT IS ORDERED:** Defendant Ryan W. Payne’s Motion for Leave to File Untimely
8 Pretrial Motion (ECF No. 2504) is **DENIED**.

9 Dated this 26th day of September, 2017.

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12 PEGGY A. LEEN
13 UNITED STATES MAGISTRATE JUDGE
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